

Ross went on to say:

If Andrew Johnson were acquitted by a nonpartisan vote . . . America would pass the danger point of partisan rule and that intolerance which so often characterizes the sway of great majorities and makes them dangerous.

Mr. President, I know morning business has expired. But in the absence of any other Senator seeking recognition, I ask unanimous consent to proceed for an additional 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. SPECTER. Mr. President, independence and dissent from the majority view has a great tradition in our country, further exemplified by independent, thoughtful U.S. Supreme Court Justices who formulated important legal principles which were later embraced as the law of the land.

In a series of powerful and famous dissents, Justice Oliver Wendell Holmes and Justice Louis Brandeis, articulated a logic so compelling that it became the majority view within a generation. Their examples serve as a reminder of the importance of dissent and independence.

As a law student, I was inspired by Justice Holmes's dissent in *Abrams v. United States*, when he wrote:

But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes can be successfully carried out. That, at any rate, is the theory of our constitution.

The theme of free-thought and independence, so artfully articulated by Justice Holmes, is also the foundation of "Profiles in Courage." I think the essence of that theme was best summarized by then-Senator John Kennedy, when he said:

Foreign ideology . . . fears free thought more than it fears hydrogen bombs.

Free thought is the ultimate road to truth. Free thought is the energy that drives the political machine that leads to good public policy in our society. Free thought, and its companion, freedom of speech and assembly and press, are the core attributes of democracy that are today taking root around the world.

"Free trade in ideas" cannot flourish when Senators are constrained to follow a political party's edict. When the merits of individual judicial nominees are debated and considered, without the counter-majoritarian filibuster preventing resolution, only then do we achieve Holmes's "best test of truth." Similarly, if the constitutional/nuclear option is debated and considered without adherence to the party line, we will pursue the tested process to find the truth that is "the only ground upon which [our] wishes can be successfully carried out."

The value of independence, expressed in the dissenting opinions of Holmes and Brandeis, called public attention to values which later became the pillars of our democracy. Dissenting in *Olmstead v. United States*, Justice Brandeis said:

The makers of our Constitution conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the [Constitution].

That view of the most basic "right to be let alone" later became the pillar of civil rights in our society in many contexts. It is the foundation of today's debate on the Patriot Act where representatives of the political right and the political left reference that value as the barometer of the balance of governmental power to provide for our Nation's security.

The Holmes/Brandeis independent views, expressed in Supreme Court dissents, later became the law of the land on such important issues as freedom of speech, prohibiting child labor, limiting working hours, and peremptory challenges in criminal cases.

These illustrations of Senatorial and judicial independence demonstrate the value of free thinking in deciding what is best for our Nation's long-range interests. Central to the definition of deliberation is thought. And we pride ourselves on being the world's greatest deliberative body. And thought requires independence—not response to party loyalty or any other form of dictation. The lessons of our best days as a nation should serve as a model today for Senators to vote their consciences on the confirmation of judges and on the constitutional/nuclear option.

If we fail, then I fear this Senate will descend the staircase of political gamesmanship and division. But if we succeed, our Senate will regain its place as the world's preeminent deliberative body.

I thank the Chair and thank my colleagues and yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM). Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF JOHN D. NEGROPONTE TO BE DIRECTOR OF NATIONAL INTELLIGENCE

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session for the consideration of calendar No. 69, which the clerk will report.

The legislative clerk read the nomination of John D. Negroponte, of New York, to be Director of National Intelligence.

The PRESIDING OFFICER. Under the previous order, there will be 4 hours of debate equally divided between the two leaders or their designees, and the Democratic time will be equally divided between the Senator from West Virginia, Mr. ROCKEFELLER, and the Senator from Oregon, Mr. WYDEN.

The Senator from Kansas.

Mr. ROBERTS. Mr. President, I thank you.

Mr. President, as chairman of the Senate Select Committee on Intelligence, I rise today in strong support of the nomination of Ambassador John D. Negroponte to serve as our Nation's first Director of National Intelligence.

The committee held Ambassador Negroponte's confirmation hearing on Tuesday, April 12, and voted favorably to report his nomination to the full Senate on Thursday, April 14.

Now, the speed with which the committee acted upon this nomination and the nomination of LTG, soon to be four-star general, Michael Hayden, to be the Principal Deputy Director of National Intelligence, really underscores the importance the committee, and I believe the Senate, places on continuing and ensuring reform of our Nation's intelligence community and, as a result, our national security.

While our intelligence community has a great number of successes—let me emphasize that—of which intelligence professionals should be justifiably proud—and the problem here is that when we have successes in the intelligence community, many times either the community or those of us who serve on the committee or those who are familiar with those successes cannot say anything about them because it is classified—but the intelligence failures associated with the attacks of 9/11 and the intelligence community's flawed assessments of Iraq's WMD programs underscored the need for fundamental change across the intelligence community.

In my years on the Senate Intelligence Committee, I have met many of these hard-working men and women of the intelligence community who work day in and day out with one goal in mind; that is, to keep this Nation secure and our people safe.

They are held back, however, by a flawed system that does not permit them to work as a community to do their best work. So we need to honor their commitment and their sacrifices by giving them an intelligence community worthy of their efforts and capable of meeting their aspirations and our expectations of them.

So responding to that demonstrated need for reform, Congress really created the position of Director of National Intelligence with the intent of giving one person the responsibility and authority to provide the leadership that the Nation's intelligence apparatus has desperately needed and to exercise command and control across all the elements of the intelligence community.